

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

INTERSTATE POWER AND LIGHT COMPANY, Petitioner, v. IOWA UTILITIES BOARD, A DIVISION OF THE DEPARTMENT OF COMMERCE, STATE OF IOWA, Respondent.	Case No. CVCV065011 RULING ON MOTION TO DISMISS AND MOTION TO ENLARGE TIME TO TRANSMIT CERTIFIED RECORD
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Introduction

This is an administrative appeal action. Because of the unusual procedural posture of this case, a dispute has arisen between the parties as to whether or not Petitioner's petition for judicial review is ripe for the Court's consideration. The Respondent, Iowa Utilities Board ("Board"), filed a pre-answer motion to dismiss on February 28, 2023. The motion has been resisted by the Petitioner, Interstate Power and Light Company ("IPL"). A reported hearing was held on March 17, 2023. The Board appeared by counsel, Diane Machir and Cecil Wright. IPL appeared by counsel, Tara Hall and Matt Sowden. Intervenor, Office of Consumer Advocate, appeared by counsel, John Crotty; however, the Intervenor took no position on the motion.

Procedural History

In November of 2021, IPL filed an application before the Board seeking advance ratemaking principles regarding four separate proposed public utility projects: (1) Duane Arnold Solar I, a 50 MW solar generating facility ("Duane Arnold I"); (2) Duane Arnold Solar II, a 150 solar generating project ("Duane Arnold II"); (3) A 200 MW Solar Facilities project ("200 MW Project"); and (4) 75 MW battery energy storage system ("Bess Project"). A contested case hearing was held on IPL's application, and on November 9, 2022, the Board issued a Final Order denying IPL's application and

declining to specify advance ratemaking principles for any of the four projects. In response, IPL filed a motion for reconsideration or for rehearing before the Board.

Ultimately, the Board granted IPL's motion for reconsideration in part and denied it in part. Specifically, the Board denied IPL's motion for reconsideration on two of the four projects described above: the 200 MW Project and the BESS Project. However, the Board granted IPL's motion for reconsideration on the other two projects: the Duane I and the Duane II projects. In response to the Board's ruling, IPL filed its petition for judicial review in this case on January 30, 2023. Then the Board entered a Stay Order on the rehearing of the Duane I and Duane II projects. In essence, the Board entered the Stay Order because of its uncertainty as to whether or not IPL's filing of its petition for judicial review deprived the Board of jurisdiction to proceed to the reconsideration and rehearing of the Duane I and Duane II projects.

Discussion

The Board filed a pre-answer motion to dismiss IPL's judicial action as being not yet ripe for determination. However, at the time of the hearing, the Board clarified that the real purpose of the motion was to seek direction from the Court on three separate issues: (1) Does the Board still have jurisdiction to proceed with its rehearing on the Duane I and Duane II projects?; (2) May IPL's petition for judicial review proceed on the 200 MW Project and the BESS Project or must judicial review of these two projects await final Board action of the Duane I and Duane II projects?; and (3) if judicial review of the 200 MW Project and the BESS Project is to proceed immediately, what constitutes the certified record that the Board must transmit to the Court?

IPL's position is that judicial review of the 200 MW Project and the BESS Project should proceed immediately. IPL indicates that these projects are stand-alone projects

that are not intertwined with the Duane I and Duane II projects so judicial review should proceed. IPL further indicates that time is of the essence in litigating its claims to conclusion. Consequently, IPL believes that judicial review of the 200 MW Project and the BESS Project should proceed forward independently of the Duane I and Duane II projects. IPL has no objection to the Court clarifying that the Board should proceed with rehearing on the Duane I and Duane II projects. As far as the certified record is concerned, IPL believes that the Board should simply provide the entirety of the agency record to the Court and parties.

As the Court noted at the onset of this Ruling, this case presents a unique procedural posture for the Court's consideration. No party has cited to any factually similar reported case that provides guidance to this Court. So, in reaching its decision, the Court has considered several factors. First, the Court has weighed IPL's desire to move forward without delay as they contend any delay of this proceeding may risk the viability of the 200 MW Project and the BESS Project while also damaging IPL's ability to adequately serve its electric customers.

Secondly, the Court has considered that the Board has clearly indicated that it viewed the 200 MW Project and the BESS Project as separate and distinct projects from the Duane I and Duane II projects. The Court reaches this conclusion based on the Board's decision to deny rehearing on the 200 MW Project and the BESS Project while granting rehearing on the Duane I and II projects. Both of these factors favor allowing judicial review of the 200 MW Project and the BESS Project to proceed.

The only factor that weighs against allowing judicial review of the 200 MW Project and the BESS Project to proceed is considerations of judicial economy. In other words, if the Court allows judicial review of the 200 MW Project and the BESS Project to proceed without waiting for final agency action on the Duane I and II

projects, the Court could end up with separate hearings, separate briefing schedules and the necessity of deciding this litigation piecemeal. While this is a legitimate concern, at this point whether or not a petition for judicial review of the Board's final agency action on the Duane I and II projects will actually occur is purely speculative as the Board hasn't made its final decision on those projects.

In sum, after considering the positions of the parties and the unique factual and procedural posture of this case, the Court concludes that judicial review of the 200 MW Project and the BESS Project should proceed. No further agency action is forthcoming on these projects and IPL is entitled to its day in Court as it seeks judicial review of the Board's action on these separate stand-alone projects. The Court also concludes that the Board should be provided clarification and direction from the Court so it can move forward to final agency action on the Duane I and II projects.

Ruling

IT IS ORDERED, ADJUDGED AND DECREED that Respondent's Motion to Dismiss is DENIED.

IT IS FURTHER ORDERED that judicial review of the 200 MW Project and the BESS Project shall proceed. The Board shall have 14 days to submit the certified record to the Court and counsel. The certified record shall consist of, at minimum, all filings up to and including the stay order entered by the Board on or about February 21, 2023.

IT IS FURTHER ORDERED that the Court will set a briefing and hearing schedule by separate order.

IT IS FURTHER ORDERED that the Court confirms that the Board retains jurisdiction and legal authority to reconsider and/or rehear advance ratemaking

principles for the Duane I and II projects and the Court directs the Board to proceed to final agency action on such requests.

SO ORDERED.



State of Iowa Courts

Case Number
CVCV065011

Case Title
INTERSTATE POWER AND LIGHT COMPANY VS IOWA
UTILITIES BOARD
Type: OTHER ORDER

So Ordered

A handwritten signature in blue ink, appearing to read "Col. McAllister", is written over a horizontal line.

Coleman McAllister, District Judge
Fifth Judicial District of Iowa

Electronically signed on 2023-03-23 14:53:31